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Division of Medicaid

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By Internet: NGoetschius@HCFA.GOV

Dear Ms. Goetschius:

We appreciate Deputy Director Fenton's letter of May 8, regarding the determination of affordability of other medical insurance in Idaho's Children's Health Insurance Program. We have received word that the comparability requirement cited in the letter is a reference to Section 1902(a)(17) [42 USC 1396a(a)(17)]. We find that the language of the statute not only completely supports the State's design of this program, but requires the use of a reasonableness standard:

A State plan for medical assistance must -

(17)...*include reasonable standards* (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels,...*for determining eligibility for and the extent of medical assistance under the plan which* (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are...available to the applicant or recipient and...as would not be disregarded...in determining eligibility for such aid, assistance or benefits, (C) *provide for reasonable evaluation of any such income or resources*, and (D) do not take into account the financial responsibility of any individual...unless such applicant or recipient is such individual's spouse...or child...; *and provide for flexibility in the application of such standards with respect to income by taking into account, the costs (whether in the form of insurance premiums...) Incurred for medical care* or any other type of remedial care recognized under State law.

Mr. Fenton's letter cites Medicaid comparability provisions as the reason for concern about Idaho's state plan. However, the only standards prescribed by the Secretary regarding comparability



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do not apply to the situation at hand. 42 CFR Section 440.240 refers to services being available to the categorically needy that are not less in amount, duration, and scope than services available to the medically needy. In the case of the Children's Health Insurance Program, there is no question that the same level and duration of benefits is available to all who are determined to be eligible. Therefore, "comparability" is not a basis for rejection of Idaho's CHIP plan design.

Idaho's State plan includes reasonable standards for determining eligibility, a reasonable evaluation of income and resources, and flexibility in applying standards that takes into account the cost of insurance premiums. "Reasonableness" as provided in the law is the heart of our eligibility determination for CHIP.

In the design of this program, we have used the same principles on which the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193) and state welfare reform are founded, which is the promotion of self reliance for Idaho families. The sole question self reliance staff need to ask themselves in making a decision is whether a decision will help this particular family become more self reliant. This is entirely consistent not only with the general Medicaid provision quoted above but also the language of the balanced Budget Act that created **CHIP**. The principles and mission contained in the federal law are those of the Idaho Department of Health and Welfare: to provide child health assistance to low income children and to maximize health benefits coverage with a capped amount of funding. 42 USC 2107(a)(1). As required by subsection (2), the plan has identified "specific strategic objectives relating to increasing the extent of creditable health coverage" for low income children.

The key to implementing these principles of reasonableness and maximization of coverage is the recognition that family circumstances are different and unique to that family. As provided in subsection (17) quoted above, we require staff to make a reasonable evaluation of income and resources and to be flexible in applying standards with respect to income, to determine whether for this particular family other health insurance is affordable. Those standards allow for consideration of all factors affecting the family. Two families can present the same income, with one family struggling to pay employer-provided health insurance and the other not making the attempt. The family that is not paying for health insurance may be supporting an elderly relative in their home and it would be unreasonable not to provide the benefit. On the other hand, the message of self-reliance may be that it is reasonable, given the totality of their circumstances, for a family to take advantage of other available coverage. This is entirely incompatible with the general Medicaid law and especially the Children's Health Insurance Program.

The concept of "crowd out" that is explicit in the CHIP statute further reinforces the need for the exercise of discretion. The requirement that **CHIP** benefits not be used in substitution for coverage under group health plans furthers the policy of expanding coverage to uninsured children. Using that principle in deciding how to evaluate affordability led Idaho to its program design; an arbitrary definition of affordability based on percentage of income does not further the policy of the program.

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The training module on the prudent person standard has already been provided, and was developed and delivered by senior legal counsel. There is one key point not reflected in the written materials. The reason it is omitted is that it is the “bottom line” of the training, which is developed through discussion of the scenarios. This key point is that, after recognizing that there is a range of responses that can be included in the term “reasonable”, it is still possible for a self reliance specialist to be undecided. Staff are told that after consulting with each other and with supervisors, if they **are** still not sure whether a given action is reasonable, the benefit of the doubt is to be given to the participant family. This message has been consistently given in the training that has been provided, and will be made explicit in written policy. In addition, as has been discussed, there is an appeal process available for a denial. The fact that the entire design is working is confirmed by the fact that there have been only two appeals and that the Department was reversed on one of them.

This agency has, over the last two years, made great efforts to align the decision-making processes of staff with the overall mission of self-reliance, with individualized evaluation of a family’s situation, and with a clear focus on the effectiveness of outcomes. We urge you to approve our **CHIP** plan expeditiously.

Sincerely,

DEEANNE MOORE
Administrator

c: Linda Caballero
MaryAnne Saunders